

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-173

In the Matter of

Amendment of Section 73.202(b), RM-8033
Table of Allotments,
FM Broadcast Stations.
(Lakewood, New York, and Clarendon,
Pennsylvania)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 24, 1992;

Released: August 18, 1992

Comment Date: October 8, 1992

Reply Comment Date: October 23, 1992

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Robert Stevens ("petitioner") requesting the allotment of Channel 295B1 to Lakewood, New York, as the community's first local FM service. To accommodate the allotment at Lakewood, petitioner also requests the substitution of Channel 282A for unoccupied but applied-for Channel 295A at Clarendon, Pennsylvania.¹ Petitioner states that he will apply for the channel, if allotted to Lakewood.

2. We believe the public interest would be served by proposing the allotment of Channel 295B1 to Lakewood since it could provide the community with its first local aural transmission service. Channel 295B1 can be allotted to Lakewood with a site restriction of 10.1 kilometers (6.3 miles) south to avoid short-spacings to Station WCTL, Channel 292A, Union City, Pennsylvania, and Station CILQ-FM, Channel 296C1, Toronto, Ontario, Canada. Channel 282A can be allotted to Clarendon in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.1 kilometers (2.6 miles) west to avoid a short-spacing to Station WLMI, Channel 280A, Kane, Pennsylvania.² Canadian concurrence in the allotments at both Lakewood and Clarendon are required because both communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. We note that the Simpsons are not entitled to reimbursement for the costs associated with changing channels because they are applicants and not permittees or licensees. However, if the proposal is adopted, they will be afforded an opportunity to amend their application to specify Channel 282A instead of Channel 295A at

Clarendon, Pennsylvania, without loss of cut-off protection. In addition, they will be served with a copy of this *Notice of Proposed Rule Making*.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.
City	Present
Lakewood, New York	295B1
Clarendon,	
Pennsylvania	295A
	282A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **October 8, 1992**, and reply comments on or before **October 23, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Frederick A. Polner, Esq.
Rothman Gordon Foreman & Groudine, P.C.
Third Floor, Grant Building
Pittsburgh, Pennsylvania 15219
(Counsel to petitioner)

7. IT IS ORDERED, That the Secretary of the Commission SHALL SEND, a copy of this *Notice of Proposed Rule Making* by REGISTERED MAIL, RETURN RECEIPT REQUESTED, to the applicant for Channel 295A at Clarendon, Pennsylvania, as follows: Cary H. and Betty F. Simpson, P.O. Box 247, Tyrone, Pennsylvania 16686.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed

¹ On March 6, 1992, Cary H. and Betty F. Simpson filed an application for Channel 295A at Clarendon (BPH-920306MA).

² The coordinates for Channel 295B1 at Lakewood are North Latitude 42-00-54 and West Longitude 79-17-38. The coordinates

for Channel 282A at Clarendon are 41-47-21; 79-08-29. We note that Channel 282A can also be used at the site specified in the pending application (BPH-920306MA) for Channel 295A at Clarendon, which are 41-48-50; 79-10-04.

Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial com-

ments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.